

**IN THE UNITED STATES DISTRICT COURT
FOR THE STATE OF NEW MEXICO**

**STATE OF NEW MEXICO, *ex rel.*
State Engineer**

Plaintiff,

69cv07941 JEC-ACE

v.

RIO CHAMA STREAM SYSTEM

RAMON ARAGON, *et al.*,

Chama Mainstream Section

Defendants.

**ORDER APPROVING WATER DIVERSION PLAN
AND EXTENDING DEADLINE FOR
REPLACEMENT OF MEASUREMENT STATION**

This matter is before the Court on the May 29, 2002 Order and Continuing Injunction (Docket No. 6714) that requires the Acequia del Rio de Chama and its commissioners (“acequia”) to submit a water diversion plan for the remainder of the 2002 irrigation season to the New Mexico State Engineer (“State”) that will offset the depletion effect on the Rio Chama of the over diversion of water by the acequia between April 4, 2002 and May 21, 2002 and ordering the acequia to replace the official measurement station for the ditch by June 28, 2002.

Following entry of the May Order, the State and the Acequia del Rio de Chama entered into a Stipulation, filed herein on June 28, 2002 (6761), which states as follows:

1. The effective over diversion from the Rio Chama by the Acequia del Rio de Chama between April 4, 2002 and Noon May 21, 2002 was 277 acre feet of water.

2. The Acequia del Rio de Chama shall offset the depletion effect on the Rio Chama from its over diversion of water between April 4, 2002 and May 21, 2002, by closing its river diversion headgate for 24 hours periods until the over diversion amount of 277 acre feet is repaid. Each 24 hour period of time that the diversion headgate is closed

shall represent a repayment of 21.818 acre feet.

3. The 24 hour repayment periods shall begin on Sunday July 6, 2002 at 6 P.M. and shall continue each Sunday for 12 consecutive weeks. A final repayment period of 16 and 3/4 hours shall begin on Sunday September 28, 2002 at 6 P.M. and end the following morning at 10:45A.M.

4. In no event is the river diversion headgate of the acequia to be opened prior to the end of each 24 hour repayment period, that is, between the hours of 6 P.M. Sunday and 6 P.M. the following Monday. If the Rio Chama watermaster finds that the diversion has been opened prior to 6 P.M. on Monday, or that the acequia failed to timely close the diversion by 6 P.M. on Sunday, the watermaster shall immediately close the diversion himself and promptly report the matter to the Court. If closed by the watermaster, the acequia's diversion headgate at the Rio Chama shall remain closed until the Court orders otherwise.

5. The Rio Chama watermaster may allow the ditch to close its diversion headgate for additional 24 hour repayment periods in order to accomplish the repayment of 277 acre feet of water prior to September 28, 2002, but the decision of whether or not to allow any such additional credits shall be completely at the discretion of the watermaster. Any additional repayment periods shall also begin at 6 P.M. and end at 6 P.M. the following day. The acequia shall make its request to the watermaster for any such additional credits at least 5 hours ahead of time (1 P.M.).

6. Paragraphs 1 through 5 above fulfill the requirements of a water diversion plan acceptable to the New Mexico State Engineer under the Court's Order (6714) filed May 29, 2002.

7. The Parties agree that the June 28, 2002, deadline in the Court's Order (6714) for the replacement of the acequia's official measurement station should be extended until January 1, 2003 to allow the acequia additional time to seek financial assistance. However, the acequia's responsibility to meet an extended deadline of January 1, 2003 shall not be contingent upon obtaining any type of financial assistance from any source whatsoever. The Acequia del Rio de Chama will replace the official measurement station by January 1, 2003 even if the acequia is required to make an assessment of its members to timely complete the project.

8. Prior to the replacement of the official measurement station, the Acequia del Rio de Chama shall make periodic reports to the Court on its progress and the arrangements the acequia has made for the replacement of the station. Progress reports shall be filed with the Court every 30 days at the beginning of each

month. Beginning with the month of November, progress reports shall be filed weekly until the project is completed.

9. With the exception of the extension of the deadline for the replacement of the official measurement station, all other provisions of the Court's Order (6714) filed May 29, 2002 shall remain in effect.

IT IS THEREFORE ORDERED that the Acequia del Rio de Chama shall offset the depletion effect on the Rio Chama from its over diversion of water between April 4, 2002 and May 21, 2002 by closing its river diversion headgate for 24 hours periods until the over diversion amount of 277 acre feet is repaid. Each 24 hour period of time that the diversion headgate is closed shall represent a repayment of 21.818 acre feet. The 24 hour repayment periods shall begin on Sunday July 6, 2002 at 6 P.M. and shall continue each Sunday for 12 consecutive weeks. A final repayment period of 16 and 3/4 hours shall begin on Sunday September 28, 2002 at 6 P.M. and end the following morning at 10:45A.M.

IT IS FURTHER ORDERED that if the Rio Chama watermaster finds that the river diversion headgate has been opened prior to 6 P.M. on Monday during any repayment period, or that the acequia failed to timely close the diversion by 6 P.M. on Sunday, the watermaster shall immediately close the diversion himself, lock it, and promptly report the matter to the Court. If the gate must be modified to permit locking, the watermaster shall cause that work to happen once a violation has taken place. If closed by the watermaster, the acequia's diversion headgate at the Rio Chama shall remain closed until the Court orders otherwise.

IT IS FURTHER ORDERED that the Rio Chama watermaster may allow the acequia to close

its diversion headgate for additional 24 hour repayment periods in order to accomplish the repayment of 277 acre feet of water prior to September 28, 2002, but the decision of whether or not to allow any such additional credits shall be completely at the discretion of the watermaster. Any additional repayment periods shall also begin at 6 P.M. and end at 6 P.M. the following day. The acequia shall make its request to the watermaster for any such additional credits at least 5 hours ahead of time (1 P.M.).

IT IS FURTHER ORDERED that the June 28, 2002 deadline in the Court's May Order for the replacement of the acequia's official measurement station is extended until January 1, 2003 to allow the acequia additional time to seek financial assistance. The acequia's responsibility to meet the extended deadline of January 1, 2003 is not contingent upon obtaining any type of financial assistance from any source whatsoever. The Acequia del Rio de Chama will replace the official measurement station by January 1, 2003 even if the acequia is required to make an assessment of its members to timely complete the project.

IT IS FURTHER ORDERED that the Acequia del Rio de Chama shall make periodic reports to the Court on its progress and the arrangements the acequia has made for the replacement of the measurement station. Progress reports shall be filed with the Court every 30 days at the first of each month, beginning in the month of August. Beginning with the month of November, progress reports shall be filed weekly until the project is completed.

IT IS FURTHER ORDERED that the State shall file a final report on the project by January 6, 2003.

IT IS FURTHER ORDERED that with the exception of the extension of the deadline for the replacement of the official measurement station, all other provisions of the Court's May 29, 2002 Order remain in effect.

IT IS FURTHER ORDERED that Mr. Waltz shall make distribution of this Order on all interested parties.

/electronic signature/
JOHN EDWARDS CONWAY
UNITED STATES DISTRICT JUDGE

Recommended by:

/electronic signature/
Leslie C. Smith, Magistrate Judge